

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1435

To be argued by
STEVEN LLOYD BARRETT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

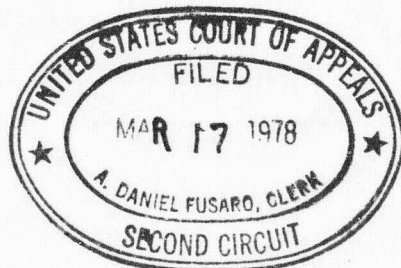
MILLICENT JONES and
LAVANNE ELAINE HAMMOND,

Defendants-Appellants.

Docket No. 77-1435
Docket No. 77-1496

APPENDIX TO THE BRIEF FOR APPELLANT
MILLICENT JONES

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



MARTIN ERDMANN,
THE LEGAL AID SOCIETY,
Attorney for Appellant
MILLICENT JONES
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

STEVEN LLOYD BARRETT,
Of Counsel.

B
OK

PAGINATION AS IN ORIGINAL COPY

M
79

A

Consp. to viol. Fed. Narco. L. S.

PAID • RELEASE

5, 5/4/77

ARREST or U.S. Custody Began *5/4/77	INDICTMENT High Risk Date Information ☐ 5-20-77	APPEARANCE 1st Plea 5-26-77	TRIAL Trial Set For 9-19-77	TRIAL Voir Dire ☐ Trial Began ☒ J 9-26-77 ☐ J	Disposition of Charges 9-29-77 ☒ On All Charges ☐ On Lesser * Offense(s) ☐ Acquitted ☐ Dismissed ☐ On Government's Motion
Summons Served	Indict. Waived ☐ Superseding ☐ Indict/Info ☐	Final Plea UNG ☐ G ☐ NOL { G. Plea W/Drawn	Trial Ended 9-29-77 UNG ☐ G ☐ NOL	☒ Convicted ☐ WOP: ☐ WP	
First Appearance	In Charging District				

MAGISTRATE		INITIAL NO.	OUTCOME
DATE	INITIAL NO.	INITIAL APPEARANCE DATE	INITIAL NO.
5/4/77	KS-08AK	5/4/77	KS08AK
PRELIMINARY EXAMINATION OR REMOVAL	DATE SCHEDULED	DATE HEARD	HELD FOR OTHER PROCEEDINGS IN DISTRICT
☐ REMOVAL	5/23/77		HELD FOR OTHER PROCEEDINGS IN DISTRICT
☐ WAIVED	☒ NOT WAIVED	TYPE NUMBER	
☐ INTERVENING INDICTMENT			

21 USC 812,841(a)(1),841(b)(1)(A) and 846 - NARCOTICS

U S Attorney or Asst.

ATTORNEYS

Martin B. McNamara
91-0071 243

243

HAMMOND

5/4/77	Complaint filed, represented by Gilbert Epstein, 100 Church St., N.Y. Defendant released on bail, address: 1372 Washington Ave., Bx., N.Y.
--------	--

5-20-77 INDICTMENT FILED, 77 CR 386

5-26-77 Def. present (no atty. present). Court directs a not guilty plea be entered. Bail \$5,000 PRB continued, with PSA supervision. Def. referred to Magistrate for assignment of counsel. Case assigned to Motley, J. for all purposes.
.....Owen, J.

6-7-77 P/T CONF. HELD & CONCLUDED. Trial date set for
to 9-19-77, 10AM. Bail as to BOTH DEFTS CONT'D. MOTLEY, J

6-17-77 Filed CJA 23 financial affdvt...

9-12-77 Deft (Atty. Leonard Joy Pres.) Application for new counsel
DENIED. MOTLEY, J

3-6-7-77 E-1

A

DATE	M. JONES	IV. PROCEEDINGS (CONDUCTED)	PAGE TWO	V. EXCLUDABLE DELAY			
				18 USC § 3161(a)(1)	18 USC § 3161(a)(2)	18 USC § 3161(a)(3)	18 USC § 3161(a)(4)
9-26-77		Jury trial begun.....Motley, J.					
9-27-77		Trial cont d.					
9-28-77		Trial cont d.					
9-29-77		Trial cont d. and concluded...Deft found Guilty..P.S.I. ordered Sent. 11-4-77....					
10-11-77		Filed defts proposed questions for voir dire..					
10-11-77		Filed defts requests to charge.					
11-23-77		Filed notice of appeal from judgment dated 11-15-77..Copy to U.S. Atty. and deft at 1372 Washington Ave. Bronx, N.Y. 10456 Apt. 5A ...Leave to proceed in forma pauperis hereby granted... Motley, J.....					

A TRUE COPY
 RAYMOND A. BURGHARDT, Clerk
 By [Signature]
 Deputy Clerk

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

B

U
S
N
A
T
O
P
R
T
U
W

USA-33s- 510 - IND./INF. (Conspiracy to distribute and possess with
Rev. 5-27-72 intent to distribute narcotic drug.)

MPM:er

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

77 CRIM. 0386

UNITED STATES OF AMERICA,

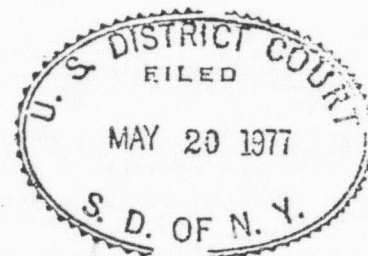
- v -

LAVANNE ELAINE HAMMOND and
MILLCENT JONES,

Defendants .

INDICTMENT

77 cr.



1. From on or about the 1st day of January, 1977 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York,

B
LAVANNE ELAINE HAMMOND and
MILLICENT JONES,

known and
the defendant s and others to the Grand Jury/unknown, unlaw-
fully, intentionally and knowingly combined, conspired, confederated
and agreed together and with each other to violate Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said
defendant unlawfully, intentionally and knowingly would distribute
and possess with intent to distribute Schedule I
narcotic drug controlled substances the exact amount thereof
being to the Grand Jury unknown in violation of Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

MICROFILM

MAY 20 1977

①

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about April 14, 1977, LAVANNE ELAINE HAMMOND and MILLICENT JONES, the defendants, had a conversation at Apartment 5a, 1372 Washington Avenue, Bronx, New York, concerning the sale of one eighth kilogram of heroin to another for \$7,000.00;

2. On or about April 15, 1977, MILLICENT JONES, the defendant, had a conversation with another at Apartment 5A, 1372 Washington Avenue, Bronx, New York, concerning the sale of one ounce of heroin.

3. On or about April 18, 1977, MILLICENT JONES, the defendant, had a telephone conversation with another.

4. On or about April 27, 1977, MILLICENT JONES, the defendant, received \$7,000 from another at Apartment 5A, 1372 Washington Avenue, Bronx, New York for one eighth kilogram of heroin.

(Title 21, United States Code, Section 846.)

Amos L. Jarvis
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.,
United States Attorney.

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

LAVANNE ELAINE HAMMOND and
MILLCENT JONES,

INDICTMENT

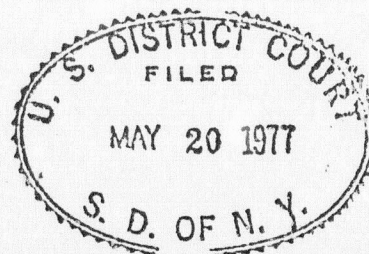
77 Cr.

Title 21, U.S.C. S. 846.

ROBERT B. FISKE, JR.
United States Attorney.

A TRUE BILL

Amir S. Tammis
Foreman.



Stewart J.

May 26, 1977 - Dept. (Mescir)
Lavanne Elaine Hammond
(no atty. present). Court directs a not
guilty plea be entered. Bail \$10,000.
PRB with pretrial supervision, continued.

Dept. Millicent Jones
(no atty. present). Court directs
not guilty plea be entered. Bail
\$5000. PRB continued.

Both depts. Bail continued with
pretrial supervision.

Both depts. Referred to
Magistrate for assignment & counsel
Case assigned Motley J
for all purposes.

Amir S.
L

10 11 11, 10. 1012 10 10 1011 DEFIS CONT'D.
Motley

SEP 12 1977 DEFT JONES - (ATTY. LEONARD JOY PRES.) APPLICATION
FOR NEW COUNSEL - DENIED

SEP 20 1977 2:15 p.m. -
Trial of both defendants begun. Deft. Hammond
(attly. Herbert Brown) made oral motion to suppress evidence.
Testimony on the motion heard. Adj'd to 9:30 on Sept. 21
to hear further testimony on the motion to suppress.

SEP 21 1977 Further testimony heard on motion
to suppress.

SEP 26 1977

Jury sworn and duly empanelled.
Opening Statements, Testimony ^{by the Govt. w.} taken
on the issues before trial, Exhibits (by
the Government) introduced. Matter adj.
to 10 a.m. Sept. 27.

SEP 27 1977

Further testimony elicited from Govt.
witness and further exhibits introduced
by the Govt. Cross-examination of the
Govt's witness by Def. Hammond
(attly. Herbert Brown) and Def. Jones
(attly. Leonard Joy). Redirect of witness
by Govt. Next Govt. witness called.
Matter adjourned to 10 a.m. tomorrow
Motley, J.

SEP 28 1977

Trial continued. Motley, J.

SEP 29 1977

Trial continued. At 12:00 p.m.,
~~both sides rested.~~ Summations by
both sides then followed. Charge
to jury. Jury retired at 5:00 p.m.
at 6:45 p.m., the jury returned
a verdict of guilty as to def. Hammond
and a verdict of guilty as to def. Jones.
The sentencing of both defendants will
take place on Friday, November 4, 1977,
at 2:00 p.m. The Government, ~~and~~
def. Hammond (atty. Herbert Brown),
and def. Jones (atty. Leonard Joy)
are directed to report to the
Probation Department on Friday,
October 28, to determine the accuracy
of the presentencing report to be
prepared as to each defendant.
at the sentencing, any inaccuracies
concerning factual matters in the
report ^{present} will be heard. The ^{bail}
for both defs. will be continue
Mortley

Nov. 15, 1977 Sentencing of both def's. (RLW)
adjourned from Nov. 4 to this date.

Def. Hammond sentenced to Two Years imprisonment, execution of sentence suspended.

Def. Hammond is placed on probation for a period of Three Years. Def. Jones

is sentenced to One Year, One Day imprisonment, execution of sentence suspended. Def. Jones is placed on probation for a period of 18 months.

Motley, J.

(RLW)

endorsements:

77 Cr. 386 - Hammond & Jones

Sept. 20, 1977 Def. Hammond (att'y. Herbert Brown) made oral pretrial motion to suppress evidence seized. Evidence introduced on this motion. Matter adjourned to 9:30 on 9/26/77. Motley, J.

Sept. 21, 1977

Further evidence introduced on oral pretrial motion to suppress. Decision on the motion read into the record: M. to Suppress denied. (1) There was probable cause for the arrest of defendant Hammond on May 3, 1977. Therefore, the driver's license found in her purse, ^{which was} within two feet of Def. Hammond at the time of her arrest may be introduced by the Govt. into evidence. (2) The agents who entered the premises at 3528 Decimer Ave. in the Bronx on May 3 had probable cause to believe that Basil Hansen, a fugitive whose arrest was sought, was in the Hammond house. The agents had seen Hansen enter the Hammond premises at 3528 Decimer at 2 p.m. and ^{not leave.} Having probable cause, a search

Hammond
77 Cr. 386

Warrant ^{was} not necessary ^{to search the Hammond premises} since agents possessed an arrest warrant for Hansen. No search warrant is required in addition to an arrest warrant to search the home of a third party. United States v. Brown, 467 F.2d 419 (D.C. Cir. 1972); Fisher v. Volz, 496 F.2d 333 (3d Cir. 1974); United States v. McKinney, 379 F.2d 259 (6th Cir. 1967); Rice v. Wolff, 513 F.2d 1280 (8th Cir. 1975), rev'd on other grounds, 428 U.S. 465 (1976). After search made and Hansen not found, two agents remained on the Hammond premises and two remained outside. The court finds that there was probable cause to believe that Hansen was still in the house since they never saw him leave. Therefore, armed with an arrest warrant, the agents had a right to remain in the house for a reasonable period of time; that is, throughout the evening as they did in this case. The agents also had probable

Hammond
77 Cr. 386

cause to believe that if Hansen had escaped unnoticed, Hansen would return that night since left behind a coat or jacket and a wallet containing \$500. While two agents in the house and two outside, they saw a blue car drive up, circle the block, and one man exited from the car and made gestures toward the house. Agents also thought they saw a person running by the house. The court finds that viewing such behavior, the agents had probable cause to reenter the house at approximately 10 p.m. The agents had reason to believe that Hansen was still in the house because of the activities involving the blue car. Having this probable cause and a still unexecuted arrest warrant, the agents did not need a search warrant. On the second search, the agents found a hidden door in an upstairs bedroom closet. The hidden door

Hammond
77 Cr. 386

led to an inner closet. In the inner closet in plain view, the agents found quinine and sugar. The agents subsequently took photographs of this closet. Because the agents had probable cause to remain in the house throughout the evening and probable cause to conduct a second search, both the quinine and sugar and the photographs may be introduced into evidence. This matter was adjourned until 10 a.m. Sept. 26.
Motley, J.

T3pm
7/29/77

HPjw 1

591

CHARGE OF THE COURT

Judge Motley

THE CLERK: The Court is about to charge the jury. Any spectator wishing to leave the courtroom should do so now. Otherwise you may remain seated until the completed charge.

Will the marshal please lock the door.

THE COURT: Ladies and gentlemen, first of all I want to thank you for your patience and for your cooperation in being prompt and for the careful attention which you have paid to the testimony and other evidence as it has been introduced in this case.

Now, I hope that you will bear with me now and give me that same degree of attention that you have given throughout the trial so that you may carefully understand the legal principles which you are to apply to the facts in this case as you find them.

Now, first of all, as you approach the performance of your function in this case which is to determine the guilt or innocence of each of these defendants separately, please remember that it is your duty to weigh the evidence calmly and dispassionately without sympathy or prejudice for or against either

1 hpjw 2

2 defendant or against the government.

3 You must bear in mind that every defendant
4 appearing before this Court is entitled to a fair and
5 impartial trial regardless of his occupation or station
6 in life.

7 We have to bear in mind the fact the govern-
8 ment is a party here, that the prosecution is brought in
9 the name of the United States of American entitles it
10 to no greater consideration than that which is accorded
11 to any other litigant in a lawsuit.

12 Also you have to bear in mind that the
13 government is entitled to no less consideration, and that
14 is because under our system all parties, both individuals
15 and government alike stand equal before the law.

16 You are not to assume that I have any
17 opinion as to the guilt or innocence of either of these
18 defendants or as to the truth or falsity of any of the
19 charges against them.

20 The fact that I have denied motions or
21 granted motions in the course of the trial is not to be
22 taken by you as any indication that the Court believes the
23 defendants are guilty or not guilty. And that is because
24 these motions and other rulings which I have made have
25 to do with questions of law and not with questions of

1 hpjw 3

2 fact which are within the exclusive province of the
3 jury.

4 Now, if during the course of the trial a
5 question was asked and an objection interposed and I
6 sustained the objection, you are to disregard the question
7 and any alleged facts contained in the questions.
8 Similarly, if I ruled that an answer be stricken from the
9 record you are to disregard both the question and the
10 answer.

11 My function is to instruct you as to the
12 law and you should accept the law as I state it to you
13 in these instructions and apply it to the facts as you
14 find them.

15 Now, the logical result of that is a verdict
16 in the case which must be, as I said before, returned
17 separately as to each defendant.

18 Now, I want to caution you that you are
19 not to single out any one instruction alone as stating
20 the law but must consider these instructions as a whole.

21 In this indictment there is a single
22 count or charge, as we say, and your verdict again as to
23 this charge, which is conspiracy to violate the federal
24 narcotics statutes must be based solely on the evidence
25 presented in court. Once again, the evidence consists

1 hñjw 4

2 of the testimony which you heard from the witness stand
3 and the exhibits which have actually been received in
4 evidence.

5 Your verdict as to each defendant must
6 be unanimous. It must be either guilty or not guilty
7 and again must be returned separately as to each
8 defendant.

9 Once again with respect to any matter of
10 fact, it is your recollection and yours alone which
11 governs. Anything that counsel for the government or
12 counsel for the defendant may have said with respect
13 to any matter in evidence, that is, any factual matter,
14 whether stated in a question, in summation or in argu-
15 ment is not to be substituted for your own independent
16 recollection of what the evidence in this case is.

17 So, too, anything which I may have said
18 during the course of the trial is not evidence.

19 Now, you as jurors are the sole and
20 exclusive judges of the facts. This means that you pass
21 on the weight of the evidence. You determine the
22 credibility, that is, the believability of the witnesses.
23 You resolve such conflicts as there may be in the
24 evidence and you draw such reasonable inferences as may
25 be warranted by the evidence in the case, that is, the

testimony and the exhibits.

The fact that I may refer to some of the testimony, even some of the exhibits during the course of these instructions, does not mean that I think that is the only evidence or the most important evidence in deciding the guilt or innocence of these defendants. You must decide all the testimony, that is, all the testimony both direct and cross examination and all the exhibits which have been received in evidence, and you should consider the contentions of the parties.

As I told you, you are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You know, of course, there is no automatic way to decide who is telling the truth and who is not. Credibility can be equated with believability and reliability. If a witness is credible you say he is believable. If he is incredible, you say he is unbelievable. There is nothing mysterious about these words or this task.

Now, by what yardstick are you to judge the credibility of the witnesses;

Each of you has observed the witnesses. They testified right here before you so you could see them, hear them and observe their demeanor and manner

1 hpjw 6

2 while on the witness stand. Issues of fact are presented
3 for your determination and to a large extent the
4 resolution of the disputed issues of fact depends upon
5 the credibility which you as the jurors attribute to the
6 testimony of various witnesses and the support or lack
7 of support that their testimony received from the other
8 evidence in the case.

9 Your duty is to decide the disputed
10 issues of fact. In doing so use your logic, your reason
11 and your common sense and do not be sidetracked or
12 diverted or distracted by what you consider to be a
13 minor or insignificant detail or irrelevancy or by what
14 you consider to be not an appeal to your reason or logic
15 but to mere sentimentality or unthinking passion. I
16 repeat, use your common sense.

17 You should carefully scrutinize all the
18 testimony given, as I have said, both direct and cross
19 examination, the circumstances under which the witness
20 has testified and every matter in evidence which tend
21 to show that a witness is worthy of belief. Consider
22 each witness' intelligence, motive and state of mind
23 and demeanor and manner while on the witness stand.

24 Consider the witness' ability to observe
25 the matters as to which he has testified and whether he

1 hpjw 7

2 or she impresses you as having an accurate recollection
3 of these matters.

4 Consider also any relation a witness may
5 bear to either side of the case and the extent to which,
6 if at all, each witness is either supported or contra-
7 dicted by other evidence in the case.

8 Now, inconsistencies or discrepancies in
9 the testimony of a witness or between the testimony of
10 different witnesses may or may not cause a jury to dis-
11 credit such testimony. Two or more persons witnessing
12 an incident or transaction may see or hear it differently
13 and as we all know, innocent recollection like failure
14 of recollection is not an uncommon experience.

15 Now, in weighing the fact of a discrepancy
16 always consider whether it pertains to a matter of
17 importance or an unimportant detail and whether the
18 discrepancy comes from innocent error or intentional
19 falsehood.

20 In determining credibility and weight to
21 be given to the testimony of a witness, you must judge
22 the testimony of the government employee witnesses in
23 this case the same way in which you judge the testimony
24 of any other witness. The mere fact that they are
25 employees of the government, as I said earlier, entitles

2 them to no more and no less consideration than that
3 accorded to any other witness.

4 Nor should you be influenced by the number
5 of witnesses or the number of documents received in
6 evidence. It is the quality of the testimony and other
7 evidence which counts, not the quantity.

8 After making your own judgment, you will
9 give the testimony of each witness such credibility, if
10 any, as you think it deserves. If you find that any
11 witness has wilfully testified falsely as to any
12 material matter, you may reject the entire testimony of
13 that witness or you may accept such part or portion as
14 commends itself to your belief, or what you find
15 corroborated by other testimony or other evidence in
16 the case.

17 Now, neither defendant in this case has
18 taken the witness stand and testified. The fact that
19 a defendant who has a right to do so has not taken the
20 stand and testified in this case does not create any
21 presumption against any defendant.

22 It cannot be considered by you as any
23 evidence against either defendant or a basis for any
24 inference unfavorable to either of them. You must not
25 permit such fact to weigh in the slightest degree

1 hpjw 9

2 against the defendants nor should it even enter into
3 your deliberations.

4 As stated before, the law never imposes
5 upon a defendant in a criminal case the burden or duty
6 of calling any witnesses or producing any evidence.
7 The defendant in a criminal case is not called upon to
8 prove his innocence since the burden is on the govern-
9 ment to prove that the accused is guilty beyond a reason-
10 able doubt as to every essential element of the crime
11 charged.

12 The defendant has a right to rely upon the
13 failure of the prosecution to establish such proof. A
14 defendant may also rely upon evidence brought out on
15 cross examination of government witnesses. The law does
16 not impose upon a defendant the duty of producing any
17 witnesses.

18 You should not speculate during your
19 deliberations as to why a defendant did not testify.
20 You may not draw any inference whatsoever from the
21 defendant's failure to take the stand.

22 The fact that there may have been other
23 persons involved in the crime charged in this indictment
24 who have not been indicted and who are not on trial is
25 simply irrelevant in determining the guilt or innocence

1 hpjw 10

2 of the two persons who are now on trial.

3 Your job is to focus on the evidence
4 adduced here as to each defendant who is now on trial
5 and to determine whether a particular defendant who is
6 now on trial is either guilty or not guilty of the
7 charge made against her, which is the charge of con-
8 spiracy to violate the federal narcotics laws.

9 In short, the guilt or innocence of each
10 defendant on trial must be determined separately and must
11 be based solely on the evidence or the lack of evidence
12 presented as to her involvement in the crime charged
13 even though there is also evidence regarding the involve-
14 ment of others.

15 And before you can find any defendant on
16 trial guilty as to the charge made against her, you
17 must be persuaded of her guilt by the evidence of her
18 personal involvement beyond a reasonable doubt.

19 Now, as you well know, each defendant has
20 pleaded not guilty to the charge. Consequently, as I
21 have told you repeatedly now, if a defendant is to be
22 convicted, the government has the burden of proving that
23 the defendant is guilty as charged beyond a reasonable
24 doubt.

25 Now, that is a burden that never shifts.

1 hpjw 11

2 It remains upon the government throughout the entire
3 trial.

4 As I told you before, a defendant does not
5 have to prove his or her innocence. On the contrary,
6 a defendant is presumed to be innocent of the accusation
7 contained in the indictment. This presumption of
8 innocence was in the defendants favor at the start of
9 the trial and continues in their favor throughout the
10 trial and is in their favor even as I instruct you now.
11 This presumption of innocence remains in their favor
12 even during the course of your deliberations in the jury
13 room.

14 Now, this presumption of innocence is
15 removed only if and when after your deliberations in the
16 jury room you come to the conclusion the government has
17 sustained its burden of proof, and that is, the government
18 has proved the particular defendant you are then consider-
19 ing guilty beyond a reasonable doubt.

20 Now, the question that naturally comes up
21 is, what is a reasonable doubt. The words almost define
22 themselves.

23 Reasonable doubt is a doubt founded in
24 reason and arising out of the evidence of the case or the
25 lack of evidence. It is a doubt which a reasonable person

has after carefully weighing all the evidence, the kind of doubt which would make one hesitate to act. It means a doubt that is substantial and not merely shadowy. Reasonable doubt is one which appeals to your reason, your judgment, your common sense and your experiences in life. It is not caprice,whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If after fair and impartial consideration of all the evidence you can candidly and honestly say that you are not satisfied of the guilt of a particular defendant, you do not have an abiding conviction as to that particular defendant's guilt, such a conviction as you would be willing to act upon unhesitatingly in important and weighty matters in personal affairs of your own life, then you have a reasonable doubt, and in that circumstance it is your duty to acquit that particular defendants.

On the other hand, if after such a fair and impartial consideration of all the evidence you can candidly and honestly say that you are satisfied of the guilt of a particular defendant, that you do have an abiding conviction as to that defendant's guilt, such a conviction as you would be willing to act upon unhesitatingly

1 in important and weighty matters in the personal
2 affairs of your own life, then you have no reasonable
3 doubt, and in that circumstance you may convict the
4 defendant.
5

6 Now, a reasonable doubt does not mean a
7 positive certainty beyond all possible doubt, and that
8 is because it is practically impossible for a person to
9 be absolutely and completely convinced of any contra-
10 verted fact which by its nature is not susceptible to
11 mathematical certainty.

12 In consequence, the law in a criminal
13 case is that it is sufficient if the guilt of a defendant
14 has been established beyond a reasonable doubt and not
15 beyond all possible doubt.

16 In order to convict a defendant in a criminal
17 case of any charge, you must find beyond a reasonable
18 doubt that the defendant acted unlawfully, wilfully and
19 knowingly.

20 Now, unlawful obviously means contrary to
21 law. An act is done knowingly if it is done voluntarily
22 and purposely, and not because of mistake, accident, mere
23 negligence or other mere innocent reason.

24 An act is done wilfully if it is done
25 knowingly, deliberately, intentionally and with an evil

1 hpjw 14

2 motive or purpose.

3 Now, in determining whether a defendant has
4 acted wilfully, it is not necessary for the government
5 to establish that a defendant knew that he or she was
6 breaking any particular law or any particular rule. It
7 must, however, prove a bad purpose or motive on the part
8 of a defendant.

9 Knowledge and wilfully an intent of a
10 defendant need not be proved by direct evidence. Like
11 any other fact in dispute, it may be established by
12 circumstantial evidence.

13 Now, there are two classes of evidence
14 recognized and admitted in courts of justice upon either
15 of which you may find an accused guilty of a crime.
16 One is called direct evidence, the other is called
17 circumstantial evidence.

18 Direct evidence tends to show the fact
19 in dispute without need for any other amplification.
20 Although of course there is always the question whether
21 that evidence is to be believed.

22 Circumstantial evidence, on the other
23 hand, tends to show other facts from which the jury may
24 infer by a process of reasoning the facts sought to be
25 established.

1 hpjw 15

2 In other words, it is that evidence which
3 tends to prove a fact in issue by proof of other facts
4 which have a legitimate tendency to lead the mind to
5 infer that the facts sought to be proved are true.

6 It is not necessary that a defendant's
7 participation in a crime be shown by direct evidence.
8 A defendant's connection to a crime charged may be
9 inferred from such facts and circumstances in evidence
10 as would legitimately tend to support such an inference.

11 Questions concerning a defendant's knowledge
12 and wilfulness and intent involve proof of a defendant's
13 state of mind at the time of the alleged crime.

14 Now, it is obviously impossible to prove
15 directly the operation of a defendant's mind because
16 you cannot look into a person's mind and see what his or
17 her intentions are or were.

18 But the proof of the circumstances surround-
19 ing a defendant's activities may well supply an adequate
20 and convincing basis for finding that the defendant
21 acted knowingly and wilfully and intentionally as charged.

22 In other words, the actions of a defendant
23 must be judged in their time and place, just as the
24 full meaning of the word is commonly understood only in
25 its relation to other words in a sentence or in its

context.

So, the meaning of a particular act or conduct on the part of a defendant may depend on the circumstances surrounding that act or conduct.

In determining the issue of knowledge, wilfulness and intent, you are entitled to consider any statements made by a defendant which are in evidence and any acts done by the accused which are in evidence and all other facts and circumstances in evidence which may aid you in determining a defendant's state of mind.

You consider such things as the age, background, occupation and experience of a defendant, and whether such facts make it likely or unlikely, probable or improbable that a defendant fully and precisely understood what he or she was doing in regard to a transaction and were relevant in relation to others.

Now, as I told you when you were being selected and before the trial commenced, an indictment is not proof or evidence. It is merely a charge or an accusation. An indictment is the technique or method or procedure which we employ in our judicial system and whereby persons are accused by a grand jury of a crime. These persons are then brought into court where their guilt or innocence is then determined by a trial jury such

1 hpjw 17

2 as you are.

3 Therefore, the indictment has no evidentiary
4 value. It should not be considered by you as proving
5 or tending to prove any of the crimes charged, and that
6 is because the government has the burden of proving each
7 charge which has been made in an indictment beyond a
8 reasonable doubt.

9 Now, since each defendant has entered a
10 plea of not guilty to the charge made in this indictment,
11 the defendant has put into issue the essential elements
12 of the crime of conspiracy.

13 The government has the burden of proof
14 proving beyond a reasonable doubt, to your satisfaction,
15 the precise charge which means it must prove each and
16 every element of that crime of conspiracy before a
17 defendant can be found guilty of that crime.

18 If, in your view, the government has failed
19 to prove any one of the elements of the crime of conspiracy
20 as to a particular defendant, then you must acquit that
21 defendant.

22 Therefore, I shall now read the charge in
23 the indictment. I shall then set forth specifically
24 each element of the crime charged which the government
25 must have proved to your satisfaction beyond a reasonable

1 hpjw 18

2 doubt before you can find a particular defendant guilty
3 of that charge.

4 The indictment reads as follows:

5 "From on or about the 1st day of January,
6 1977, and continuously thereafter, up to and including
7 the date of the filing of this indictment" which was
8 May 20, 1977, "in the Southern District of New York"
9 and that includes the Bronx, "Lavanne Elaine Hammond and
10 Millicent Jones, the defendants, and others to the grand
11 jury known and unknown, unlawfully, intentionally and
12 knowingly combined, conspired, confederated and agreed
13 together and with each other to violate Sections 812,
14 841-A-1, and 841-B-1, Title 21, United States Code.

15 "It was part of said conspiracy that the
16 said defendant unlawfully, intentionally and knowingly
17 would distribute and possess with intent to distribute
18 Schedule I narcotic drug controlled substances, the
19 exact amount thereof being to the grand jury unknown,
20 in violation of Sections 812, 841-A-1 and 841-B-1, of
21 Title 21, United States Code.

22 "In pursuance of the said conspiracy and
23 to effect the objects thereof, the following overt
24 acts were committed in the Southern District of New York.

25 "1. On or about April 14, 1971,

1 hpjw 19

2 Lavanne Elaine Hammond and Millicent Jones, the defendants,
3 had a conversation in Apartment 5-A, 1372 Washington
4 Avenue, Bronx, New York, concerning the sale of one-eighth
5 kilogram of heroin to another for \$7,000.

6 "2. On or about April 15, 1977,
7 Millicent Jones, the defendant, had a conversation with
8 another at Apartment 5-A, 1372 Washington Avenue, Bronx,
9 New York, concerning the sale of one ounce of heroin.

10 "3. On or about April 18, 1977,
11 Millicent Jones, the defendant, had a telephone conver-
12 sation with another.

13 "4. On or about April 27, 1977,
14 Millicent Jones, the defendant, received \$7,000 from
15 another at Apartment 5-A, 1372 Washington Avenue, Bronx,
16 New York, for one-eighth kilogram of heroin."

17 Now, what is a conspiracy?

18 A conspiracy is a collective criminal agree-
19 ment, a partnership in crime. A conspiracy presents a
20 greater potential threat to government and society than
21 acts committed by a lone wrongdoer. Concerted action
22 for criminal purposes often, if not normally, makes
23 possible the attainment of ends more complex than those
24 of an individual acting alone to accomplish.

25 Moreover, a group association increases the

1 hpjw 20

2 likelihood that the criminal objective will be successfully
3 realized and renders detection more difficult than in the
4 instance of the lone wrongdoer.

5 It is because of these and other reasons
6 that Congress has made conspiracy or concerted action
7 to violate the federal law a separate and entirely
8 distinct crime, that is, separate and distinct from the
9 substantive crime which may be the objective of the
10 conspiracy.

11 Now, in order to prove the crime of
12 conspiracy which is alleged here, you must find that the
13 government has established beyond a reasonable doubt each
14 of the following four essential elements of the crime of
15 conspiracy:

16 First. The existence of conspiracy.

17 Second. That it was a purpose of the
18 conspiracy as alleged in the indictment to violate federal
19 statutes regulating the sale and distribution of narcotic
20 controlled substances.

21 Third. That the defendant knowingly and
22 wilfully became a participant in or a member of the
23 conspiracy.

24 Fourth. That at least one of the co-
25 conspirators knowingly committed at least one of the overt

1 acts set forth in the indictment in furtherance of the
2 conspiracy and during the period of conspiracy alleged
3 in the indictment.
4

5 Now, those are the four essential elements
6 of the crime of conspiracy. And now I am going to
7 discuss each one of those four elements in greater
8 detail.

9 As I said before, a conspiracy is a
10 combination or an agreement of two or more persons by
11 concerted action to accomplish a criminal or unlawful
12 purpose or some purpose not in itself criminal or
13 unlawful by criminal or unlawful means.

14 The gist of the crime of conspiracy is the
15 unlawful combination or agreement to accomplish one or
16 more of the unlawful objectives alleged. Whether or not
17 the defendants accomplish what is alleged they conspired
18 to do, that is, whether or not they actually achieve the
19 unlawful goals alleged, is immaterial to the question of
20 guilt or innocence.

21 A conspiracy has sometimes been called a
22 partnership in crime in which each member becomes the
23 agent of every other member.

24 To establish a conspiracy, the government
25 is not required to show that two or more persons sat

1 around a table and entered into a solemn compact orally
2
3 or in writing stating that they have formed a conspiracy
4 to violate the law setting forth the details of the plan,
5 the means by which the unlawful project is to be carried
6 out or the part to be played by each co-conspirator.

7 Indeed, it would be extraordinary if there
8 were such a formal agreement or specific oral agreement.
9 Your common sense will tell you that when persons in
10 fact undertake to enter into a criminal conspiracy,
11 much is left to unexpressed understanding. Conspirators
12 do not usually reduce their agreements to writing or
13 acknowledge them before a notary public, nor do they
14 publicly broadcast their plans.

15 From its very nature, a conspiracy is
16 almost invariably secret in its origins and execution.
17 Therefore, it is sufficient if you find that two or
18 more persons in any manner through any contrivance
19 impliedly or tacitly come to a common understanding to
20 violate the law.

21 Express language or specific words are
22 not required to indicate a consent or attachment to a
23 conspiracy nor is it required to find that all the co-
24 conspirators alleged in the indictment joined in the
25 conspiracy in order to find that a conspiracy existed.

1 hpjw 23

2 You need only find that one alleged co-
3 conspirator or a defendant entered into an unlawful
4 agreement with one or more persons in order to find
5 that a conspiracy existed.

6 In determining whether there has been an
7 unlawful agreement, you may judge the acts and conduct
8 of the alleged co-conspirators which are done to carry
9 out an apparent criminal purpose.

10 The old adage actions speak louder than
11 words is applicable here.

12 Usually the only evidence of a conspiracy
13 is that of disconnected acts which, however, when taken
14 together in connection with each other, show a conspiracy
15 to secure a particular result as satisfactorily and as
16 conclusively as more direct proof.

17 Proof concerning the accomplishment of the
18 objective of the conspiracy may be the most persuasive
19 evidence of the existence of the conspiracy itself.
20 If you believe it was successful may be the best proof
21 of the existence of the agreement.

22 In this connection, however, it is not
23 necessary for the government to prove the success of the
24 conspiracy in order to establish a violation of the
25 conspiracy statute.

As a conspiracy is basically the agreement to violate the law, it may exist even though the final objective is never accomplished.

In determining whether the conspiracy charged in this indictment actually existed, you may consider evidence of the acts and conduct of the alleged conspirators as a whole and the reasonable inferences to be drawn from such evidence.

If, upon consideration of the evidence, you find beyond a reasonable doubt that the minds of at least two of the alleged co-conspirators met in an understanding way, and that they agreed as I have just explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy, but only of its existence, is complete.

Now, as to the second element of the conspiracy. But before I go to that, I want to make one further point about the existence of a conspiracy which you must find.

While the period of time charged in the indictment runs from in or about January 1st of this year to the date of filing of the indictment which is May 20th of this year, it is not necessary for the government to

1
2 prove the conspiracy started and ended on those specific
3 dates. It is sufficient if you find that a conspiracy
4 was formed and that it existed for some substantial
5 time within the period set forth in the indictment and
6 that at least one overt act was committed during that
7 period.

8 An overt act, if you find it occurred,
9 need not have occurred on a specific date set forth in
10 the indictment. You need only find that it occurred
11 no earlier than January 1st of this year and no later
12 than May 20th of this year.

13 A conspiracy continues for as long as the
14 evidence shows the conspirators intended it to continue.
15 Such intention may be inferred from the activities of
16 the conspirators in furtherance of any of the unlawful
17 purposes of the conspiracy.

18 Now, coming to the second element, the
19 unlawful purpose of the conspiracy. After you find that
20 a conspiracy existed, if you so find, you must then find
21 as the indictment charges, that the conspiracy had as
22 its objectives the violation of Sections 812, 841-A-1
23 and 841-B-1(a) of Title 21, United States Code.

24 Now, these federal statutes which I have
25 just cited make it a crime to distribute or possess with

1 hpjw 26

2 intent to distribute a narcotic drug controlled substance
3 except as authorized by law.

4 The government must prove this second
5 element of the crime of conspiracy, that is, it must
6 prove that it was a purpose of the conspiracy either to
7 distribute a narcotic drug controlled substance or to
8 possess with intent to distribute a narcotic drug
9 controlled substance or both without any lawful authority
10 for doing so.

11 Now we come to the third element.

12 The third element which you must find is
13 that the particular defendant who you are then considering
14 knowingly and wilfully became a member of the conspiracy.
15 If you conclude that a conspiracy as charged existed
16 and that its purpose was to violate the federal narcotics
17 laws to which I have just referred, you must next deter-
18 mine whether the defendant you are considering was a
19 member of the conspiracy. That is, whether she participated
20 in the conspiracy with knowledge of its unlawful purposes
21 and in furtherance of its unlawful objectives.

22 A defendant's participation in a conspiracy,
23 like its existence, can be inferred from such facts and
24 circumstances in evidence as would logistically sustain
25 that inference.

1 hpjw 27

2 I want to caution you, however, that mere
3 association of one defendant with an alleged conspirator
4 or conspirators does not establish her membership or
5 participation in the conspiracy, if you find that one
6 did exist. So, too, mere knowledge by a defendant of
7 the conspiracy or any illegal act on the part of an alleged
8 co-conspirator is not sufficient evidence to establish
9 membership in the conspiracy.

10 You must find, as I have said, actual
11 knowing participation by the particular defendant in the
12 agreement to violate the law. Again, an act is done
13 knowingly if it is done voluntarily and purposefully and
14 not because of mistake, accident, mere negligence or
15 other innocent reasons. An act is done wilfully if it
16 is done knowingly and deliberately and with an evil
17 motive of purpose.

18 Again, in determining whether a defendant
19 has acted wilfully, it is not necessary for the government
20 to establish that the defendant knew that she was breaking
21 a particular law or any particular rule. It must,
22 however, prove that defendant had an evil motive or bad
23 purpose in mind.

24 Now, even if one conspirator joined the
25 conspiracy after it was formed and was engaged in it to

1 a degree more limited than that of other co-conspirators,
2 she is equally culpable so long that you find that
3 she was a co-conspirator. In other words, it is not
4 required that a person be a member of the conspiracy from
5 its very start. He or she may join it at any point
6 during its progress and be held responsible for all
7 that has been said or done in furtherance of the conspiracy
8 before he or she joined and that may be done or said in
9 furtherance thereof during the existence of the conspiracy
10 and while he or she remains a member.

11
12 Simply stated and using the partnership
13 analogy, by becoming a partner he or she assumes all the
14 liabilities of a partnership including those which
15 occurred before he or she became a member.

16 It is not required the government show
17 that a conspirator knew all the other members of the
18 conspiracy and a conspiracy once formed is presumed to
19 have continued until its objective was accomplished or
20 some affirmative act or determination by its members.

21 Once you are satisfied beyond a reasonable
22 doubt a conspiracy as alleged existed and that either or
23 both defendants were members of it, any acts or declara-
24 tions of any other person whom you find is also a member
25 of the conspiracy, done or made during its pendency and

1 hpjw 29

2 in furtherance of its objectives are considered the
3 acts and declarations of all other members even though
4 the particular defendant was not present at the time or
5 did not know such statements were made or such acts
6 were done by others in furtherance of the conspiracy.

7 In other words, every co-conspirator is
8 fully responsible for what every other co-conspirator
9 does in furtherance of the conspiracy whether he knows
10 about it or not and whether he specifically approves of
11 it or not.

12 Now we come to the fourth and final element
13 of the crime of conspiracy.

14 The offense of conspiracy is complete
15 only when the unlawful agreement is made and any single
16 overt act to effect the object of the conspiracy is
17 thereafter committed by at least one of the co-conspirator

18 An overt act is any step, action or conduct
19 which is taken to achieve, accomplish or further the
20 objective of the conspiracy.

21 Now, the purpose of requiring proof of an
22 overt act is that while parties may conspire and agree
23 to violate the law or to do an unlawful thing, they may
24 change their minds or even abandon the project and do
25 nothing to carry it into effect, in which event it

2 would not be an offense.

3 Now, the prosecution is not required to
4 set forth in the indictment each and every act on which
5 it relies to establish the existence of the conspiracy
6 or the defendants' participation therein, nor is it
7 required to prove each overt act which may have occurred
8 during and in furtherance of the conspiracy.

9 But, it is required to prove that at least
10 one overt act did take place here in the Southern
11 District of New York, which as I said, includes the
12 Bronx.

13 Now, the overt act may not be criminal in
14 itself. It may for instance consist of meetings of the
15 defendant and the co-conspirators. The overt act,
16 however, must be an act which follows and tends toward
17 the accomplishment of the plan or scheme charged in the
18 conspiracy and must be knowingly done in furtherance of
19 the objective of the conspiracy.

20 In sum, if you find existence of a conspiracy
21 as charged, that the purpose of the conspiracy was to
22 violate the laws as I mentioned previously, and if you
23 also find knowing participation in that conspiracy
24 by the particular defendant you are then considering,
25 you may find the defendant guilty if you find that the

1 government has proved beyond a reasonable doubt that
2 at least one overt act as alleged in the indictment
3 occurred here in the Southern District of New York, as
4 alleged in the indictment.
5

6 Now, if you find that the government has
7 failed to prove any one of the four elements of the
8 crime of conspiracy which I have just enumerated and
9 discussed for you as to a particular defendant beyond
10 a reasonable doubt, then you must find that defendant
11 not guilty of the charge of conspiracy.

12 On the other hand, if you find that the
13 government has sustained its burden of proving each and
14 every one of the four elements of the crime of conspiracy
15 which I have just enumerated and discussed as to a
16 particular defendant beyond a reasonable doubt, then you
17 may convict that defendant.

18 Now, the jury is not to consider or in
19 any way to speculate about the punishment which a defendant
20 may receive if found guilty. That is because the function
21 of a jury is to determine the guilt or innocence of a
22 defendant on the basis of the evidence and the Court's
23 instructions as to the law. It is then for the Court
24 alone that has the duty of determining sentence if there
25 is a conviction.

1
2 Therefore, you should not during the
3 course of your deliberations discuss any possible punish-
4 ment.

5 Now, the most important part of this case,
6 ladies and gentlemen, is the part which you now as jurors
7 are about to play because it is for you and you alone
8 to decide whether a defendant is guilty or not guilty
9 as to the charge made in this indictment.

10 I know that you will try the disputed
11 facts which have been presented to you according to the
12 oath which you have taken as jurors.

13 Now, in that oath you promised that you
14 would well and truly try the issues joined in this case
15 and a true verdict render.

16 Now, I suggest to you if you follow that
17 oath and try the issues, without combining your thinking
18 with any emotions, you will arrive at a true and just
19 verdict.

20 It must be clear to you that once you get
21 into an emotional state and let fear or prejudice or
22 bias or sympathy interfere with your thinking, then
23 you will not arrive at a true and just verdict.

24 And, as you deliberate, ladies and gentlemen,
25 please be careful to listen to the opinions of other

1 jpjw 33

2 jurors as well as to ask for an opportunity to express
3 your own views.

4 Now, I want to remind you that no one
5 juror holds the center stage in the jury room and no one
6 juror may control or monopolize the deliberations.

7 Now, if after listening to your fellow
8 jurors and if after stating your own view you become
9 convinced your view is wrong do not hesitate because of
10 stubbornness or pride of opinion to change your view.

11 On the other hand, do not surrender your
12 honest conviction solely because of the opinion of your
13 fellow jurors or because you are outnumbered.

14 You may send for any of the exhibits you
15 desire to see, or have any of the testimony read back.
16 You are instructed that you are not to reveal the standing
17 of the jurors, that is, the split of the vote for any
18 verdict to anyone, including the Court, during the time
19 of your deliberations, if that should occur.

20 Now, I have already read and discussed the
21 indictment for you and you will recall in substance the
22 indictment charges that the two defendants conspired
23 with each other and with others both known and unknown
24 to violate the federal narcotics laws.

25 That means that if you find beyond a reasonable

1 hpjw 34

2 doubt that only one of the defendants on trial conspired
3 with someone who is not a named defendant and is
4 therefore not now on trial, that defendant would still
5 be guilty of conspiracy even though you find the other
6 defendant was not involved in that conspiracy.

7 Another way of looking at this is that if
8 you find that one of the defendants didn't conspire
9 with anyone, but that the other defendant did conspire
10 with a non-defendant, then you must find the non-conspiring
11 defendant not guilty of conspiracy.

12 Thus, you may find each defendant guilt
13 as to the charge of conspiracy. You may find each defend-
14 ant not guilty as to the charge of conspiracy. Or,
15 you may find one defendant guilty and the other defendant
16 not guilty of the charge of conspiracy.

17 Your verdict as to each defendant must
18 be returned separately, as I have said, and your verdict
19 as to each defendant must be unanimous and must result
20 from the conscientious conviction of each and every one
21 of you.

22 Will the lawyers in the case please approach
23 the bench.

24 (In the robing room)

25 THE COURT: Mr. Joy, do you have any

1 hpjw 35

2 exceptions to the charge?

3 MR. JOY: Your Honor, I understood your
4 Honor to say that you would give my Request No. 2 and
5 I have to confess that I didn't hear you give that
6 unless I missed something.

7 THE COURT: I think in discussing the second
8 element of the crime, and let me go over that again, of
9 conspiracy, that reads as follows:

10 The indictment charges that the conspiracy
11 had as its objective the violation of Section 812,
12 841-A-1 and 841-B-1-(a) of Title 21, United States Code.
13 These federal statutes make it a crime to distribute or
14 possess with intent to distribute a narcotic drug
15 controlled substance except as authorized by law. The
16 government must prove the second element of the crime of
17 conspiracy, that is, it must prove that it was a purpose
18 of the conspiracy either to distribute a narcotic drug
19 controlled substance or to possess with intent to
20 distribute a narcotic drug controlled substance or both
21 without any lawful authority for doing so.

22 MR. JOY: I think you have covered it
23 substantially.

24 THE COURT: Anything else?

25 MR. BROWN: No, your Honor.

1 hpjw 36

2 MS. GOLD: Nothing, Judge.

3 (In open court)

4 THE COURT: At this time I believe we
5 will excuse the alternate juror.

6 (The alternate juror was excused)

7 THE COURT: I will ask the clerk to
8 swear the marshal.

9 (A marshal was duly sworn)

10 THE COURT: Would the marshal please
11 approach the bench.

12 (Pause)

13 THE COURT: The jurors may follow the
14 marshal to the jury room.

15 (Jury left the courtroom)

16 THE COURT: I will ask the lawyers to
17 remain on this floor in the event that the jurors
18 should send for any of the exhibits or want the testimony
19 read back.

20 I have suggested to the marshal that they
21 make arrangements now to take them to dinner at 7:00
22 o'clock in the event they have not returned with a verdict
23 and that they arrange to have limousines to take them
24 home at 10:30 if they haven't reached a verdict at that
25 time and then we will continue tomorrow morning.

1 pjw 37

2 Please remain on this floor so we don't
3 have to look around to call you, at least until we go
4 out to dinner.

5 MR. BROWN: Your Honor, would it be
6 possible for me to go to the 19th floor to Judge Bonsal's
7 chambers for a moment. I think it will be very short.

8 THE COURT: All right.

9 (Time noted: 5:05 p.m.)

10 (5:30 - note received from the jury)

11 THE COURT: Ladies and gentlemen, I have
12 a note from the jurors which has been marked Court's
13 Exhibit 2 which reads as follows:

14 "May we have:

15 "1. Copy of indictment.

16 "2. Pictures.

17 "3. Four elements of the conspiracy.

18 "4. The packets with the quinine."

19 Now, the U.S. Attorney has handed up a
20 clean copy of the indictment, the two pictures, Govern-
21 ment's Exhibits 4-A and B, and the packet with the
22 quinine which is Government's Exhibit 8.

23 With respect to the four elements of
24 conspiracy, I suppose I could read those four elements.
25 I gather they want that without the elaboration.

2 Any comment?

3 MR. JOY: I think that's correct. I
4 gather one of them being the objective of the conspiracy
5 which you referred to as the purpose, I think.

6 THE COURT: No further comments? We
7 will bring in the jury. I will read the four elements.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Hammond

Pd. 4

1 1 hpsr

2 [Jury present.]

3 THE COURT: Ladies and gentlemen, I have here
4 a note which reads as follows: May we have, one, copy
5 of indictment; two, pictures; three, four elements of a
6 conspiracy; four, the packet with quinine.

7 Now, we have the copy of the indictment, the
8 two pictures which are Government Exhibits 4A and 4B
9 and the packet with the quinine, Government's Exhibit
10 8. I will ask the Clerk to hand those to the forelady.
11 [Handed.] With respect to the four elements of con-
12 spiracy, you will recall I enumerated those four elements
13 and I discussed those four elements in greater detail.
14 I gather you want me to just enumerate the four elements
15 again, is that right?

16 THE FORELADY: Yes.

17 THE COURT: In order to prove the crime of
18 conspiracy which is alleged here you must find that
19 the government has established beyond a reasonable doubt
20 each of the following four essential elements of the
21 crime of the conspiracy.

22 First, the existence of a conspiracy.

23 Second, that it was a purpose of the conspiracy
24 as alleged in the indictment, to violate federal statutes
25 regulating the sale and distribution of narcotic-controlled

1 2 hpsr

2 substances.

3 Third, that the defendant knowingly and
4 wilfully became a participant in or a member of the
5 conspiracy.

6 Fourth, that at least one of the co-conspirators
7 knowingly committed at least one of the overt acts set
8 forth in the indictment in furtherance of the conspiracy
9 and during the period of the conspiracy alleged in the
10 indictment.

11 Those are the four elements and then as I
12 have indicated, I then proceeded to discuss those in
13 greater detail.

14 You may return to the jury room.

15 [Jury left the courtroom.]

16 [6:40 p.m.]

8 With respect to the Government's request to
9 charge, number 1 is accepted in substance.

10 Number 2 is accepted in substance.

11 3 is accepted in substance.

12 MR. JOY: Excuse me, your Honor, may I comment
13 on 3. I object and strongly urge the Court not to use the
14 last two paragraphs which are some kind of historical basis
15 for the conspiracy laws as being prejudicial and unnecessary.

16 THE COURT: Do you have some authority for that?

17 MR. JOY: No, your Honor, but I think that there
18 is enough without adding this kind of thing which I think
19 tends to make the jury feel that the government has more
20 than they have indicated by the testimony. I think by saying
21 that it is a greater potential and threat to the public interest,
22 a group, association of organized activity and renders
23 detection more difficult, for these reasons and others they
24 make conspiracy a crime, I know it has been used by some
25 judges; it has been rejected by others in this court and I

1 hpjl 10

2 would ask your Honor not to include it.

3 MR. BROWN: If I may, your Honor, I believe that
4 that paragraph sort of paints the whole trial with a brush of
5 conspiracy and if it is charged by your Honor, then it would
6 mean that the Court is also in belief that the events in-
7 volved have a sinister connotation.

8 In view of that, your Honor, I would also ask
9 the Court not to include that in the charge. I believe that
10 the charge of conspiracy, the first paragraph, is sufficient.

11 Certainly if paragraphs 2 and 3 are included,
12 then the Court might be or the jury might decide that the
13 Court was going to tell them something concerning the sinister
14 pattern involved in this particular case.

15 THE COURT: The problem with this is, as
16 suggested, that this charge has been given countless times
17 and if there was something wrong with that charge, I'm sure
18 it would have been taken up to the Court of Appeals a long
19 time ago. Has it ever been taken up to the Court of
20 Appeals, do you know?

21 MR. JOY: I think it has been upheld, but I
22 think it is a matter of the Court's discretion and what we are
23 urging your Honor to do is not include it.

24 Obviously it has been used, has not been reversed
25 that I know of and I doubt that it would be reversed here

1 hpjl ll

2 if your Honor gave it.

3 However, there are a number of judges in this kind
4 of a conspiracy cases who do not give it for just the reasons
5 that I have outlined to your Honor, and I think under those
6 circumstances, where it is not given, obviously that is not
7 appealed and I would just urge your Honor not to include it
8 as a matter of your Honor's discretion.

9 THE COURT: What does the government say?

10 MS. GOLD: Your Honor, as your Honor knows, it is
11 a perfectly proper charge and in addition I think singularly
12 appropriate in a case where both defense attorneys in their
13 opening statement commented on the fact that the government
14 wouldn't produce any narcotics in this case.

15 THE COURT: That will be charged. As I have
16 indicated, it is a charge which is usually, normally given.
17 I think that laymen are amazed sometimes to find that there
18 is a separate crime of conspiracy.

19 I have had experiences of having to reread that
20 charge to many juries, It is a difficult concept for
21 laymen and I think most lawyers and there is a lot of ob-
22 jection to this kind of language, but I personally think
23 it is helpful for the jurors to understand that conspiracy
24 is a separate and distinct crime and to understand why the
25 Congress has deemed it appropriate to make it a separate
and distinct crime.

5 4 is accepted in substance except that I think
6 there are four elements to the charge of conspiracy. First,
7 existence of the conspiracy; second, that it was the objective
8 of the conspiracy as alleged in the indictment and, third,
9 that the defendant: knowingly and willfully became a member
10 and fourth the overt act aspect of it.

11 Number 5 is accepted in substance.

12 Number 6 is accepted in substance.

13 7 is accepted in substance.

14 8 is accepted in substance.

15 9 is accepted in substance.

16 10 is accepted in substance.

17 11 is accepted in substance.

18 12 is accepted in substance.

19 13 is inapplicable. There were no character
20 witnesses called here.

21 14 is inapplicable.

22 MR. JOY: Your Honor, with respect to interest,
23 I assume or I hope that your Honor in your general instruc-
24 tions to the jury will include as one of the items they should
25 take into account the interest they may find of any witness

CERTIFICATE OF SERVICE

March 17 , 1978

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Steven R. G. Gannett

